

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

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**FILE:** B-215959**DATE:** August 14, 1984**MATTER OF:** Ray Service Company**DIGEST:**

1. Protest is dismissed where underlying solicitation has been canceled, and this cancellation renders the protest academic.
2. Protest to GAO concerning solicitation defect is untimely where firm protested to the contracting agency prior to the closing date for receipt of quotations, but did not protest to GAO within 10 working days after closing occurred. Where agency does not take corrective action requested, closing constitutes initial adverse action on the agency-level protest.

Ray Service Company (RSC) protests requests for quotations (RFQ) Nos. F08620-84-Q0849 and F08620-84-Q0849A issued by the Department of the Air Force (Air Force) for refrigeration services. The Air Force canceled RFQ No. F08620-84-Q0849, revised the solicitation and reissued it as RFQ No. F08620-84-Q0849A. RSC protests improprieties contained in both RFQ's.

We dismiss the protests.

By letter dated May 31, 1984, RSC protested the original RFQ, arguing RSC did not have sufficient time from receipt of the RFQ to prepare an offer. RSC also protested that the RFQ statement of work and other RFQ terms and conditions were defective and, thus, also made it impossible to submit an offer. RSC requested that the RFQ be canceled and reissued. The RFQ was canceled and reissued on June 12, 1984, with a closing date of June 27, 1984. On June 25, 1984, RSC protested the revised RFQ, contending that the solicitation requirements remained defective. On June 27, 1984, RSC submitted an offer with a cover letter which advised that the offer was submitted under protest pending an agency response to the June 25 protest and again requesting that the RFQ be revised and reissued. On July 1,

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1984, award was made to Destin Air Condition Company. By letter dated July 11, 1984, the Air Force denied RSC's protest. On July 30, RSC filed a protest with GAO.

With regard to RSC's protest of solicitation improprieties relating to the canceled RFQ, we have held that we will not consider issues raised by a protest when the solicitation underlying it has been canceled, since cancellation of the solicitation renders the protest academic. Accordingly, we dismiss the protest against RFQ No. F08620-84-Q0849. Cal-Type, B-213242, Jan. 12, 1984, 84-1 C.P.D. ¶ 67; Scientific Games, Inc., B-213208, Jan. 9, 1984, 84-1 C.P.D. ¶ 58.

Also, we find RSC's protest to our Office against the revised RFQ is untimely and we will not consider the protest on the merits. Section 21.2(a) of our Bid Protest Procedures, 4 C.F.R. part 21 (1984), requires that, if a protest is filed initially with a contracting activity, a subsequent protest to this Office must be filed within 10 working days after the protester has "actual or constructive notice of initial adverse agency action." The quoted phrase is a term of art that is construed to include knowledge that the agency proceeded with a bid opening or closing in the face of the protest. Central Air Service, Inc., B-213205, Feb. 6, 1984, 84-1 C.P.D. ¶ 147. Here, since the protest to our Office filed on July 30, 1984, was received more than 10 working days after closing occurred on June 27, 1984, the protest is late under § 21.2(a). Furthermore, the fact that an agency later formally denies an agency-level protest, as the Air Force did here, does not alter the firm's responsibility to conform to the filing requirement of § 21.2(a) in protesting to our Office. Central Air Service, Inc., B-213205, supra.

*Harry R. Van Cleve*

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Acting General Counsel